



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28, 1995

Mr. Douglas R. Hyde  
Assistant City Attorney  
Criminal Law and Police Division  
Office of the City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR95-108

Dear Mr. Hyde:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 31088.

You received a request for information under the Open Records Act on December 5, 1994. You requested a decision from this office on December 30, 1994. Consequently, you failed to request a decision within the ten days required by section 552.301(a).

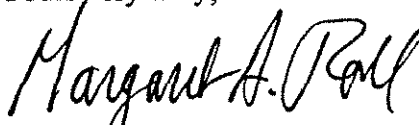
Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination about the availability of the information. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

In this case, we conclude that the information is presumed to be public and must be released. No previous determination addresses the availability of this requested information. This office has broad discretion to determine whether the availability of

specific information has been addressed in a previous determination. *Houston Chronicle Publishing Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989). We have determined that a governmental body must seek our decision when we have discussed the standard to be applied under a particular exception to disclosure, but have not resolved the applicability of that standard to the particular records at issue. Open Records Decision No. 435 (1986) at 2. We have established a general standard to be applied in determining when section 552.108 applies, but we have not yet applied that standard to the records at issue here. Furthermore, you have not shown compelling reasons why the information at issue should not be released. The autopsy report and the information normally found on the first page of the offense report are clearly public and should have been released at the time the request was made. See Open Records Decision No. 529 (1989) (interpreting article 49.25, section 1 of the Code of Criminal Procedure); Open Records Decision No. 127 (1976). In addition, your claim that releasing the requested information could compromise an ongoing investigation is not compelling. Compelling reasons arise when a third party's interests are at stake. Open Records Decision No. 552 (1990) at 1. In this case, you have not provided any explanation of how releasing the requested information would compromise an ongoing investigation, much less how any third party's interests are at stake. Thus, because we conclude that a previous determination does not exist regarding this information and that you have not provided any compelling reasons for withholding the information, you must release it in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/rho

Ref: ID# 31088

Enclosures: Submitted documents

cc: Mr. William Shockey  
P.O. Box 75924  
Oklahoma City, Oklahoma 73147  
(w/o enclosures)